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April 21, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20008

DOCKET FILE COPY ORIGINAL

Re: **In The Matter of : Policies and Rules for the Direct Broadcast  
Satellite Service, IB Docket No. 98-21**

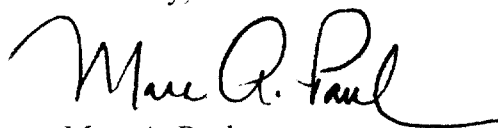
Dear Ms. Salas:

On behalf of EchoStar Communications Corporation ("EchoStar"), enclosed for filing is an original and four copies of EchoStar's Comments in the above-referenced matter.

Also enclosed is an additional copy of EchoStar's Comments which we ask that you date stamp and return with our messenger.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Marc A. Paul

*Counsel for EchoStar  
Communications Corporation*

Enclosure

cc: All Counsel of Record

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of: )  
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Policies and Rules for the )  
Direct Broadcast Satellite Service )  
\_\_\_\_\_ )

IB Docket No. 98-21

**REPLY COMMENTS OF ECHOSTAR COMMUNICATIONS CORPORATION**

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Dated: April 21, 1998

## SUMMARY

EchoStar Communications Corporation (“EchoStar”) hereby files these Reply Comments in response to the Comments to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned matter. Commenters have universally joined EchoStar in applauding the Commission’s efforts to streamline and consolidate the Direct Broadcast Satellite (“DBS”) regulations into Part 25. Commenters also agree that, in streamlining or modifying the Commission’s DBS service rules the Commission should be mindful to preserve the regulatory flexibility that has worked well in the DBS industry.

EchoStar’s Reply Comments focus on the following points. First, EchoStar reiterates the need for the Commission to adopt a cross-ownership restriction for cable’s entry into DBS. As many of the commenters observe, cable still dominates the MVPD market and has the incentive to stifle DBS as an alternative to cable. Moreover, dramatic developments have transpired since the last time the Commission considered the issue in 1995. The possibility of combining two full-CONUS slots in a single-dish offering and taking on cable on a more equal footing has apparently caused cable operators to value DBS resources several hundred million dollars more than in January 1996. This dramatic increase in valuation is apparently due to anti-competitive reasons – the desire to neutralize what has emerged as a real threat to cable.

The Commission need not fear that a cable/DBS cross-ownership ban (particularly one that the Commission would review after three years, as in the LMDS case) would be vulnerable to court scrutiny. The Court of Appeals for the D.C. Circuit recently upheld the three-year ban on telephone companies and cable operators acquiring in-region 1150 MHz LMDS licenses. Indeed, there is here a far more compelling case for imposing such a ban than in

the LMDS proceeding; a failure to act here could not be squared with the Commission's decision in that proceeding, which was largely based on PRIMESTAR's conduct in the DBS area.

Furthermore, in connection with the proposed ban, the Commission should closely scrutinize any lease of DBS resources or facilities to cable-affiliated lessees. Such transactions can have similar competitive consequences to an outright transfer of control. Therefore, the Commission should carefully examine whether such arrangements constitute a de facto transfer of control. It should also establish a presumption that the lease of DBS resources or facilities to a cable-affiliated lessee constitutes such a transfer and an impermissible attempt at circumventing the proposed cross-ownership ban, unless proven otherwise.

Second, driven by market forces, EchoStar is voluntarily introducing service to Alaska and Hawaii. Such initiatives, and not additional regulation that further disadvantages DBS in comparison to cable operators, should be the preferred means for securing service for these states.

Third, EchoStar cautions the Commission not to adopt additional technical constraints for DBS when it consolidates Part 100 with Part 25. As EchoStar pointed out in its comments and other commenters agreed, many of the Fixed-Satellite Service requirements set forth in Part 25 are not consistent with the nature of the high-power, direct-to-home small dish DBS service. Imposing these requirements or supplementing Appendices S30 and S30A of the ITU Radio Regulations would be detrimental to DBS, which relies upon the use of a small dish to provide high-quality television services to millions of Americans in direct competition to cable.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of:

Policies and Rules for the  
Direct Broadcast Satellite Service

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)  
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**REPLY COMMENTS OF ECHOSTAR COMMUNICATIONS CORPORATION**

EchoStar Communications Corporation (“EchoStar”) hereby files these Reply Comments in response to the Comments to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned matter.<sup>1</sup> Commenters have universally joined EchoStar in applauding the Commission’s efforts to streamline and consolidate the Direct Broadcast Satellite (“DBS”) regulations into Part 25. Commenters also agree that, in streamlining or modifying the Commission’s DBS service rules the Commission should be mindful to preserve the regulatory flexibility that has worked well in the DBS industry. EchoStar’s Reply Comments focus on the following points. (1) EchoStar reiterates the need for the Commission to adopt a cross-ownership restriction for cable’s entry into DBS; (2) EchoStar submits that market forces, and not additional regulation that further disadvantages DBS in comparison to cable operators, should be the preferred means for securing service for Alaska and Hawaii; and (3) EchoStar

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<sup>1</sup> Policies and Rules for the Direct Broadcast Satellite Service, FCC 98-26 (rel. Feb. 26, 1998) (“DBS NPRM”).

cautions the Commission not to adopt additional technical constraints for DBS when it consolidates Part 100 with Part 25.

**I. COMMENTERS SUPPORT THE COMMISSION'S PROPOSALS TO STREAMLINE THE DBS SERVICE RULES**

Like EchoStar, many commenters support the Commission's proposals to eliminate unnecessary and duplicative regulations by consolidating DBS rules with the regulations for other satellite systems. They agree that the adoption of uniform application requirements for all satellite services will benefit the DBS industry by reducing regulatory costs and confusion by eliminating uncertainty over which procedural rules apply.<sup>2</sup> Support also exists for the Commission to grant a construction permit, launch authorization and license for space station facilities through one application process.<sup>3</sup> As the Commission observed in the DBS NPRM, reduction in regulatory processing will "permit licensees to develop business plans with greater certainty," and in addition, it will reduce regulatory costs, thereby conserving Commission and private resources.<sup>4</sup>

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<sup>2</sup> See EchoStar Comments at 2-3; Loral Comments at 2 ("Consolidation of the satellite service rules will simplify the development of satellite services, thereby decreasing licensees' regulatory costs."); DirecTV Comments at 5; PRIMESTAR Comments at 4.

<sup>3</sup> See EchoStar Comments at 3; DirecTV Comments at 5.

<sup>4</sup> DBS NPRM at ¶ 24.

At the same time, however, commenters also agree that the Commission should maintain its well-reasoned judgment that DBS permittees be afforded regulatory flexibility.<sup>5</sup> As Loral observes:

[T]he multichannel video programming distribution market is a dynamic and changing one. The Commission must not lose sight of its overall goal to provide DBS providers the flexibility needed to continue developing their services to meet consumer demand.<sup>6</sup>

Without this regulatory flexibility, EchoStar agrees that the ability of DBS to compete with the cable industry and to adapt to changing technology would be severely compromised.<sup>7</sup>

For the same reasons, the Commission should resist the request of some commenters to expand the obligations of subscription DBS systems. For example, the United Church of Christ and the Consumers Union (collectively “UCC”) request that specific language be adopted to require all DBS applicants to “establish their basic qualifications as broadcast licensees.”<sup>8</sup> The Commission, however, has conclusively decided the issue of whether subscription DBS providers should be subject to the same qualification requirements and

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<sup>5</sup> See EchoStar Comments at 3; Tempo Comments at 2 (“This preserves the Commission’s initial approach to the regulation of DBS to give licensees the flexibility to exercise their reasonable judgment to respond to consumer demand. As experience indicates, this concept has enabled the still-nascent DBS service to grow at an unprecedented rate.”); USSB Comments at 2; Ameritech Comments at 2-3; PRIMESTAR Comments at 5; The News Corporation Limited Comments at 1-2.

<sup>6</sup> Loral Comments at 4.

<sup>7</sup> For example, the Commission should continue to allow permittees to satisfy their due diligence requirements through appropriately crafted leases, as well as outright ownership, of satellite transponder/facilities. See DirecTV Comments at 5.

<sup>8</sup> United Church of Christ and Consumers Union Comments at 3.



regulations as broadcast licensees in the Subscription Video Order.<sup>9</sup> There is no need to revisit the issue now in a rulemaking devoted to streamlining DBS regulations. As the Commission recognized,

[L]icensees that take steps to prevent the general receipt of their service evidence the requisite intent that it not be received by the public and are therefore not broadcasting as defined by the Act. We believe that transmissions designed to be available only to paying subscribers clearly demonstrate the intent of the licensee, and provide a superior indicia of that intent than the content of the programming.<sup>10</sup>

## **II. A DBS CROSS-OWNERSHIP RESTRICTION WOULD ENCOURAGE MVPD COMPETITION**

EchoStar and the National Rural Telecommunications Cooperative (“NRTC”) support the adoption of a formal rule to restrict the ownership of DBS systems by the cable industry.<sup>11</sup> Other commenters disagree and believe that a case-by-case evaluation of cable’s entry into the DBS industry is sufficient.<sup>12</sup> Regardless of this disagreement, numerous

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<sup>9</sup> See Subscription Video, 2 FCC Rcd. 1001 (1987), aff’d sub nom. National Ass’n for Better Broadcasting v. FCC, 849 F.2d 665 (D.C. Cir. 1988).

<sup>10</sup> Subscription Video, 2 FCC Rcd. at 1005. The Commission’s character qualifications apply to all DBS providers and other Commission licensees, regardless of subscription or broadcast status, hence disposing of the qualification concerns raised by UCC.

<sup>11</sup> EchoStar Comments at 3; NRTC Comments at 4. In addition, commenters such as DirecTV and BellSouth admit that a predicate exists for the Commission to adopt a cable cross-ownership rule. See DirecTV Comments at 8; BellSouth Comments at 4. See also Univision Comments at 1 (“Univision urges the Commission not to permit major MVPD service providers, such as vertically-integrated cable multiple system operators (“MSOs”), to deprive the marketplace of the competitive opportunity offered by DTH services.”).

<sup>12</sup> See, e.g., Time Warner Cable Comments at 2; Tempo Satellite Comments at 7; PRIMESTAR Comments at 6; The News Corporation Limited Comments at 2.

commenters have expressed their concern over cable's entry and believe that it poses a genuine threat to the viability of DBS.

Cable dominates the MVPD market.<sup>13</sup> As one commenter accurately stated, DBS has not "yet come close to the level of penetration necessary to compete equally with incumbent cable providers or to have a significant restraining effect on cable rates."<sup>14</sup> Indeed, local markets for the delivery of video programming remain highly concentrated as entrenched cable companies maintain "barriers to both entry and expansion by competing distributors."<sup>15</sup> Accordingly, so long as cable dominates the MVPD market, its economic incentives to enter the DBS industry remain vastly different than those of an independent (*i.e.*, unaffiliated with cable) DBS provider. PRIMESTAR's plans in connection with its proposed acquisition of MCI's permit are an example. PRIMESTAR apparently plans to market its services primarily as a niche service or complement to cable. Moreover, as EchoStar has explained at length in the MCI/PRIMESTAR proceeding, conditions restricting the conduct of such a cable-affiliated

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<sup>13</sup> It should be noted that commenters support the designation of the MVPD product market as the relevant product market for DBS. See EchoStar Comments at 5-7; DirecTV Comments at 6-7 ("DirecTV believes that the MVPD market and local geographic markets remain the proper relevant markets to assess transactions that affect the ownership of DBS frequencies."); Ameritech Comments at 8.

<sup>14</sup> NRTC Comments at 4. See also DirecTV Comments at 7; Ameritech Comments at 4; Bell South Comments at 3; Wireless Cable Association at 2.

<sup>15</sup> See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, FCC 97-423 at ¶ 11 (rel. Jan. 13, 1998) ("1997 Annual Competition Report").

operator are inherently inadequate. The Commission cannot legislate competitive zeal and compel PRIMESTAR to compete fiercely against its shareholders.

Commenters opposed to a cable cross-ownership rule point to the 1995 DBS rulemaking and 1992 Tempo order where the Commission declined to adopt such a restriction.<sup>16</sup> Commenters argue that the circumstances surrounding these decisions have not changed. As EchoStar has shown in its comments, however, the circumstances have dramatically changed.

Since December 1995, it has become apparent that it is possible to combine two full-CONUS slots in a manner that would: (1) require only one consumer dish; (2) incorporate local-into-local signals; and (3) would take on cable on a more equal footing. As an apparent result of this development – the most serious threat to cable so far – cable operators were ready to offer MCI and News Corp. in 1997 hundreds of millions of dollars more than they had bid at the 1996 auction (plus substantial apparent concessions to News Corp.). The alliance between EchoStar and News Corp., which relied on precisely such a combination, was unfortunately followed by News Corp.'s breach of its agreement and capitulation to the cable interests. The increased value of DBS full-CONUS spectrum to cable operators can only be due to the need of cable operators to neutralize that new threat. These post-1995 developments provide a compelling rationale for now restricting access of cable operators to full-CONUS DBS spectrum.

EchoStar similarly does not deny that when granting a DBS permit to TEMPO the Commission refrained from imposing an ownership restriction because it hoped that an

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<sup>16</sup> See, e.g., The News Corporation Limited Comments at 3-5; PRIMESTAR Comments at 13-17; TEMPO Comments at 7; Time Warner Cable Comments 2-7.

affiliation with cable would actually increase MVPD competition.<sup>17</sup> The reality, however, is that nine years later TEMPO has failed to bring any DBS service to consumers. Clearly, circumstances have changed since the Commission previously considered a cross-ownership rule. The Commission now has the opportunity to ensure that DBS remains a competitor to cable by imposing a cable cross-ownership restriction.

Nor need the Commission fear, as some Commenters suggest, that a cable-DBS cross-ownership restriction would be vulnerable to court scrutiny. The Court of Appeals for the D.C. Circuit recently upheld the three-year ban on telephone companies and cable operators acquiring in-region 1150 MHz LMDS licenses.<sup>18</sup> Nowhere in that proceeding did the cable operators attempt to make the novel arguments suggested here. In fact, as EchoStar has pointed out, the case for cable ownership restriction is far more compelling here than in the LMDS proceeding, especially considering that the cable/LMDS ban was largely based on evidence of PRIMESTAR's conduct in the DBS area. Indeed, it would be the failure to impose such a restriction here that would be hard to reconcile with the Commission's LMDS decision and that would unnecessarily cast doubt on the sound reasoning of that decision.

Moreover, a cable cross-ownership restriction would not be contrary to the Commission's stated goal of maintaining regulatory flexibility for DBS. Such a rule could be

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<sup>17</sup> See Continental Satellite Corporation et al., 4 FCC Rcd. 6292, 6298-99 (1989).

<sup>18</sup> Melcher, et al. v. FCC, 134 F.3d 1143 (D.C. Cir. 1998). EchoStar would not be opposed to a comparable time limit for the cable DBS cross-ownership restriction. Specifically, the Commission could decide to review the continued appropriateness of the rule in triennial proceedings.

structured as a presumption against allowing cable operators to control full-CONUS DBS resources. Cable operators and DBS providers can petition the Commission to waive a cable cross-ownership rule if they can bear a substantial burden of showing that cable ownership is in the public interest as a presumption against allowing cable operators to control full-CONUS DBS resources.<sup>19</sup>

EchoStar rejects the claim that a cross-ownership restriction is not needed because of the introduction of new “innovative technologies” that will somehow discipline the conduct of cable operators.<sup>20</sup> The reality is that these new innovative technologies, such as the Ka-band and terrestrial digital MVPD platforms, are just that – new and unproven. In contrast to DBS, it is unclear whether these systems will even be attractive to consumers, thereby making them viable competitors to cable.

Of course, as EchoStar pointed out in its comments, a cross-ownership restriction would be arbitrary, meaningless and indeed harmful if it were not applied to the current effort of PRIMESTAR to acquire the DBS permit of MCI Telecommunications Corporation. Commenters agree that the PRIMESTAR transaction presents a serious threat to the viability of DBS as a competitor to cable.<sup>21</sup> As previously observed, if the Commission were to approve this

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<sup>19</sup> Similar waiver petitions have been filed in the LMDS context. See “Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver of Incumbent LEC/Cable Eligibility Restrictions,” Public Notice, DA 98-731 (Rel. April 16, 1998).

<sup>20</sup> The News Corporation Limited Comments at 6.

<sup>21</sup> See EchoStar Comments at 4-5; Univision Comments at 6; DirecTV Comments at 10 (“[T]he Commission should deny [the proposed MCI-PRIMESTAR transaction] in order to prevent the national distribution potential of DBS spectrum at one of the prime DBS orbital

(Continued...)

transaction, it would effectively be approving a market model where DBS would be consigned to be a complement, not a substitute, for cable.

Finally, in connection with the recommended cable/DBS cross-ownership restriction, the Commission should pay close attention to arrangements such as leases of DBS resources or facilities to cable operators. While such arrangements may not confer upon the cable-affiliated lessee ownership of Commission authorizations or DBS facilities, they may be very similar to outright acquisitions, especially in their competitive effects. The arrangements between Tempo and PRIMESTAR regarding use of Tempo's satellite at 119° W.L. are a worrisome example of a lease-type agreement that does not appear to differ from a permit assignment in its competitive consequences. To avoid circumvention of the proposed cross-ownership rules, the Commission should, at a minimum, closely scrutinize such leases to determine whether they constitute an impermissible transfer of de facto control. Additionally, the Commission should consider establishing a presumption where cable-affiliated lessees of DBS resources and facilities are deemed to exercise de facto control of these resources, unless

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locations from falling into the hands of a conglomerate comprised of the nation's largest cable incumbents. These entities have incentives to see DBS develop as a complement to, rather than a substitute for, their franchised cable operations, and a track record that suggests a real and substantial potential for anticompetitive conduct.") (footnotes omitted); United Church of Christ and Consumers Union Comments at 3 ("A major basis of UCC, et al.'s opposition to the proposed MCI-PRIMESTAR assignment is that the assignee in that case, which is owned and controlled by the largest cable MSO's, will misuse its proposed purchase of a high-power DBS licensee to impede growth of DBS competition.") (footnotes omitted); Wireless Cable Association Comments at 3-5; BellSouth Comments at 4 ("[The PRIMESTAR-MCI] transaction poses an enormous threat to MVPD competition, and simply cannot be approved absent conditions designed to prevent anticompetitive harm to alternative MVPDs.") (footnote omitted); NRTC Comments at 5.

they can make a compelling showing that a cable-independent entity exercises full control. The Commission has very broad authority to establish such a presumption: “It is well settled that an administrative agency may establish evidentiary presumptions . . . if there is a sound and rational connection between the proved and inferred facts.”<sup>22</sup> Here, the requisite rational connection is supplied by the link between the Tempo-PRIMESTAR lease arrangement, which in many respects appears to be a surrogate for the outright assignment of Tempo’s license requested by PRIMESTAR.

### **III. THE COMMISSION MUST NOT UNDULY EXPAND ITS DBS GEOGRAPHIC SERVICE REQUIREMENTS**

EchoStar is sympathetic to the concerns of consumers in Alaska and Hawaii who seek an alternative to the incumbent cable operator in their state.<sup>23</sup> Indeed, of all the DBS providers, EchoStar will provide the first-ever DBS service to Hawaii and Alaska with the launch of its next satellite. Voluntary initiatives such as EchoStar’s should obviate any thought of expanding the geographic service requirements and the regulatory burdens hampering DBS providers.<sup>24</sup> Similarly, as other commenters observe, the adoption of an “off-shore states” policy is “unnecessary” and would only serve to unduly restrict a “still evolving DBS” industry.<sup>25</sup>

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<sup>22</sup> Chemical Manufacturers Association v. Department of Transportation, 105 F.3d 702, 705 (D.C. Cir. 1997); see also United Scenic Artists, Local 829 v. NLRB, 762 F.2d 1027, 1034 (D.C. Cir. 1985).

<sup>23</sup> See Comments of the State of Hawaii at 2.

<sup>24</sup> See also TEMPO Comments at 6-7 (“TEMPO submits that existing market forces will encourage DBS operators to maximize their service offerings and to use the efficiencies of satellite delivered services to best meet customer demand. . . . Operators should continue to have reasonable discretion and flexibility to respond to market dynamics.”). EchoStar also rejects the

(Continued...)

#### **IV. THE COMMISSION'S PROPOSED TECHNICAL RULES**

Commenters have indicated their support of the Commission's proposal to require licensees to: (1) comply with Appendices S30 and S30A of the ITU Radio Regulations; and (2) delete Section 100.21 which prohibits DBS providers from exceeding the technical limits set forth in Annex 1 to Appendices S30 and S30A.<sup>26</sup> EchoStar reiterates that the Commission should authorize systems exceeding the limits in the ITU Radio Regulations if the effect on other system(s) is negligible or if, in the Commission's judgment, there are reasonable assurances that the agreement of the affected administration(s) can be obtained.<sup>27</sup> By doing so, the Commission will not, as one commenter stated, "artificially constrain the technical flexibility of DBS applicants."<sup>28</sup>

EchoStar remains opposed to the development of U.S. rules "to supplement those specified in Appendices S30 and S30A."<sup>29</sup> In particular, it strongly objects to the claims of SkyBridge that "DBS systems should be protected only to the extent they meet certain receive

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proposal of Microcom (an Alaskan based distributor of DBS products) to define "service levels" for purposes of determining when a DBS provider should be considered as providing service to Alaska. Mirocom Comments at 3. EchoStar submits that the Commission's current rules are sufficient, and further definition of "service levels" is not necessary at this time.

<sup>25</sup> DirecTV Comments at 20.

<sup>26</sup> EchoStar Comments at 12-14; PRIMESTAR Comments at 19-20; TEMPO Comments at 3; USSB Comments at 5; Panamsat Comments at 2; DirecTV Comments at 23;

<sup>27</sup> See DBS NPRM at ¶ 45.

<sup>28</sup> Panamsat Comments at 2.

<sup>29</sup> See DBS NPRM at ¶ 47.



antenna performance standards,” including the size of receive earth station antennas, as well as other technical constraints set forth in the ITU Broadcast Satellite Service (“BSS”) Plan.<sup>30</sup> Dish size is critical to the viability of DBS as an alternative to cable, and restrictions on the size of dishes would substantially undermine DBS’s appeal. The ITU BSS Plan, established many years ago was modeled on an obsolete analog BSS paradigm. As the Commission is well aware, all deployed U.S. DBS systems utilize more advanced digital technologies requiring high power. In the words of one commenter, “[i]t is impossible, without creating massive technical disruption, to ‘turn back the clock’ to the technical parameters envisioned more than a decade ago and protect the U.S. DBS systems only to those parameters. . . . [T]he parameters of existing systems set a minimum benchmark that must be honored.”<sup>31</sup>

Instead, the Commission should continue its approach of simply requiring DBS systems not to cause any significant additional interference to other satellite systems beyond the levels contemplated under the ITU BSS Plan. SkyBridge is a “late-comer” to the already densely deployed DBS bands, and the Commission should not entertain its calls for restrictions on fully developed satellite services. Any such restrictions would dramatically upset the expectations of entrepreneurs, like EchoStar, which invested hundreds of millions of dollars to deploy high-

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<sup>30</sup> SkyBridge Comments at 4.

<sup>31</sup> PRIMESTAR Comments at 22.

power satellites that can operate with very small dishes and thus appeal to residential consumers.<sup>32</sup>

With respect to coordination among licensees, EchoStar agrees in principle with several commenters that licensees operating at the same orbital location should coordinate among themselves.<sup>33</sup> In particular, EchoStar agrees with PRIMESTAR that the “primary burden of coordination falls upon the newcomer to the orbital location that seeks to deploy a technology that is inconsistent with established operations.”<sup>34</sup>

As for Telemetry and Command (“TT&C”) operations, support exists for the Commission to preserve some flexibility and not preclude out-of-band TT&C operations upon an adequate showing of no harmful interference.<sup>35</sup> For example, EchoStar believes that the Commission should continue to allow use of the extended C-band for TT&C operations of DBS systems.

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<sup>32</sup> The Commission should also not allow the procedural simplification of consolidating Part 100 and Part 25 to cause substantive changes to the technical requirements of DBS systems. For example, the power limits and antenna performance requirements that Part 25 imposes in the closely spaced environment of the Fixed-Satellite Service are totally inconsistent with the very nature of the high-power, direct-to-home small dish DBS service. See EchoStar Comments at 12-13. In that regard, EchoStar supports the current definition of DBS as juxtaposed to the definition of Fixed-Satellite Service and believes that the definition of DBS should remain tied to the BSS frequencies. See DirecTV Comments at 5.

<sup>33</sup> See, e.g., PRIMESTAR Comments at 20; TEMPO Comments at 4; DirecTV Comments at 25.

<sup>34</sup> PRIMESTAR Comments at 20.

<sup>35</sup> See EchoStar Comments at 13; TEMPO Comments at 6.

**V. CONCLUSION**

For the foregoing reasons, the Commission should adopt the following rules as part of its effort to streamline DBS regulations: (1) harmonize its DBS rules with its satellite rules in Part 25 while preserving the nature of DBS as a lightly regulated service; (2) adopt a cable cross ownership restriction that applies equally to all DBS providers and closely scrutinize leases of DBS resources to cable-affiliated lessees; and (3) rely on initiatives, such as EchoStar's, as opposed to additional regulation, to ensure DBS service for Alaska and Hawaii.

Respectfully submitted,

**EchoStar Communications Corporation**

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Dated: April 21, 1998

## CERTIFICATE OF SERVICE

I, Marc A. Paul, hereby declare that the foregoing Reply Comments of EchoStar was sent this 21st day of April, 1998, by first-class mail to the following:

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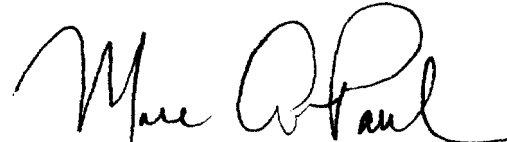
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